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STATE OF BIHAR AND ORS.

v.

KAMLESH JAIN

NOVEMBER 5, 1992

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[LALIT MOHAN SHARMA, S. MOHAN AND
N. VENKATACHALA, JJ.]

Constitution of India, 1950 :

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Articles 32 and 226—Public Interest Litigation—Writ Petition filed seeking relief for an ailing doctor, staying with brother—Maintainability of—High Court granting relief—Validity of—State not expected to choose individuals for special treatment—Judicial process not to be allowed to be used for the satisfaction of individual whims—Guidelines for entertainment of such claims laid down.

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A large number of doctors employed in the State Health Services of the appellant-State were leaving India for higher studies, after obtaining leave for a couple of years, and thereafter, they were neither returning to India, nor were sending any further applications for extension of leave.

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This was causing considerable hardship to the public. As this trend persisted, the state authorities wanted to take appropriate corrective steps. Since the absentee doctors had not informed the department of their addresses, personal service of notice on such doctors could not be effected. A general notice was published and press communique was issued in newspapers in India and abroad calling upon them to offer their

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explanations for remaining absent from service for more than five years, within the specified time and indicating that on their failure to do so, the services of 320 doctors would be terminated with the concurrence of the State Public Service Commission and the approval of the State Cabinet. Services of doctors were, accordingly, terminated.

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The respondent filed a Public Interest Litigation before the High Court stating that the particular doctor was unwell and was in need of financial help. The services of this doctor had also been terminated along with others. The details as to how she was taken ill and admitted in a hospital outside the country and then brought back to India for further

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treatment in the State, were given.

The High Court directed the appellants to pay the post retirement benefits to the medical officer doctor concerned. Earlier the High Court had also directed payment of Rs. 2,000 to the respondent writ petitioner as relief to the doctor concerned.

Allowing the appeal of the State, this Court,

HELD : 1.1. It is not known how the respondent-writ petitioner became so interested in the beneficiary, who was being taken care of in the hospital and receiving attention of eminent doctors, and who had atleast a brother with whom she was staying for sometime. The respondent-writ petitioner could not tell about the other family members and relations of the beneficiary or how and why in this background the respondent chose the beneficiary for showering her benevolence in preference over the far more needy old and sick persons who are, unfortunately, in large number in the appellant-State. The judgment under challenge also does not indicate any reason. [360-B-D]

1.2. Since there is no reason at all in the order under challenge or in the writ petition which may justify the relief granted in the present case, the writ petition should have been dismissed. [360-H; 361-A]

1.3. There is also no reason to accede to the request made on behalf of the respondent that the cheque for Rs. 2000, mentioned in the first paragraph of the High Court's orders, drawn in the name of the beneficiary, may be directed to be drawn in the name of the respondent-writ petitioner for the beneficiary's fingers had since become stiff and hence the cheque could not be encashed. There is no suggestion to the effect that the beneficiary has no relation of her own, who can look after her needs. [361-B]

2. There is no doubt that the State should strive to promote the welfare of its people so that at least the bare necessities of life are met and the needy and the sick are properly looked after. This can be done only by adopting a welfare scheme in the interest of the general public; and since the resources of the State are not unlimited, the State is not expected, in absence of relevant reasons, to choose an individual for special treatment at the cost of the others. Ordinarily, therefore, it is desirable for the State authorities to take up the individual cases coming to their notice and do their best in accordance with the policy decision of general application.

A This will ensure equal treatment to all - of course in accordance with the individual needs. Unless all relevant materials are placed by an applicant, it will be onerous task for the Court to take upon itself to determine the extent of help a particular individual has to get. The circumstance that a particular person is smart enough to approach the Court or is so fortunate to get somebody to do that on his or her behalf, cannot be a valid ground to divert the State funds to his or her advantage at the cost of corresponding disadvantage to others. A judicial process should not be allowed to be used for the satisfaction of an individual's whims, pious, though, they may apparently look. [360-E, F, G]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4650 of 1992.

From the Judgment and Order dated 18.2.1991 of the Patna High Court in C.W.J.C 6581 of 1990.

D Ranjit Kumar for the Petitioners.

Ms. Sangeeta Aggarwal for the Respondent.

The Judgment of the Court was delivered by

E **SHARMA, J.** 1. Heard the learned Counsel for the parties. Special Leave is granted.

F 2. This appeal by the State of Bihar and its Officers is directed against the order of the High Court dated 18.2.91 passed on a Writ Petition claiming to have been filed as a Public Interest Litigation for certain reliefs to be made available to a doctor who was earlier in the State service and whose services had been terminated in 1987.

G 3. The beneficiary of the impugned judgment Dr. Ms. Sandhya Das was appointed as a Medical Officer in the Bihar State Health Services in 1961 and worked as such till 1971. She left India for higher studies in 1971 after obtaining leave for a period of two years. After the expiry of the leave period, she neither returned to India nor made any further application for extension of her leave. Nothing was heard from her thereafter. She was not the only one to do so. A large number of doctors employed in the Bihar Health Services were acting in similar manner, causing considerable **H** hardship to the public. As this trend persisted, the State authorities could

not ignore the problem and the relevant rules were examined, legal opinion was obtained and it was decided to take appropriate corrective measures. The absentee doctors, presumably placed in more lucrative jobs, did not care to inform the department of their addresses, and personal service of notice on such doctors could not be effected. In the circumstances, acting on the opinion of the Advocate General, general notice was published and press communique was issued in newspapers in India and abroad calling upon them to offer their explanations for remaining absent from service for more than five years (this period is mentioned in the Rules), within the time indicated. Dr. Ms. Sandhya Das was also one of such doctors and was called upon to join her duty in India by such a communique issued in 1982, telling her that on her failing to do so, her services would be terminated in accordance with the Service Code. Nothing was heard from her. The matter of termination of services of such doctors was referred to Bihar Public Service Commission, and the Commission gave its concurrence in 1986. Accordingly, the services of 320 doctors including that of Dr. Das was terminated in 1987. This had the approval of the Bihar Cabinet.

4. The Writ Petition out of which the present appeal arises was filed in 1990 by one Ms. Kamlesh Jain as a Public Interest Litigation, stating that Dr. Das was unwell and was in need of financial help. Some details as to how Dr. Das was taken ill and admitted in a hospital in Glasgow and then came back here for further treatment have been given. She was, it is stated, staying with her brother for sometime on her return to India and eminent doctors of Bihar who were consulted could not get her substantial relief and ultimately she had to be admitted in the P.M.C.H. hospital of Bihar in Patna. In this background the writ application was filed.

5. The High Court's judgment under appeal is very perfunctory. The entire Order reads thus :-

"18.2.91. Learned G.P.I. hands over a cheque of Rs. 2000 drawn in the name of Dr. Sandhya Das, to Miss Kamlesh Jain, who had filed this writ application as public interest litigation on behalf of Dr. Sandhya Das. This has been accepted by Miss Kamlesh Jain. The Payment has been made in compliance with the order dated 18.1.91.

We dispose of this writ application with a direction to

A: the respondents to pay the post retirement benefits to Dr. Sandhya Das within a period of three months from today. We make it clear that this order will not be construed to mean that Dr. Sandhya Das accepts her date of retirement to be 21.7.1987. If so advised, she may agitate the matter through a fresh writ application."

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We have not been able to discover as to how the writ petitioner became so interested in Dr. Das who was being taken care of in the P.M.C.H. hospital of Bihar and receiving attention of eminent doctors and who has atleast a brother with whom she was staying for sometime. The learned

C Counsel for the writ petitioner, respondent before us, could not tell us about the other family members and relations of Dr. Das, or how and why in this background the writ petitioner Ms. Kamlesh Jain chose Dr. Das for showering her benevolence in preference over the far more needy old and sick persons who are, unfortunately, in large number in Bihar. The impugned judgment also does not indicate any reason.

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6. There is no doubt that the State should strive to promote the welfare of its people so that at least the bare necessities of life are met and the needy and the sick are properly looked after. This can be done only by

E adopting a welfare scheme in the interest of the general public; and since the resources of the State are not unlimited, the State is not expected, in absence of relevant reasons, to choose an individual for special treatment at the cost of the others. Ordinarily, therefore, it is desirable for the State authorities to take up the individual cases coming to their notice and do their best in accordance with the policy decision of general application.

F This will ensure equal treatment to all – of course in accordance with the individual needs. Unless all relevant materials are placed by an applicant, it will be an onerous task for the Court to take upon itself to determine the extent of help a particular individual has to get. The circumstance that a particular person is smart enough to approach the Court or is so

G fortunate to get somebody to do that on his or her behalf, cannot be a valid ground to divert the State funds to his or her advantage at the cost of corresponding disadvantage to others. A judicial process should not be allowed to be used for the satisfaction of an individual's whims, pious, though, they may apparently look. Since we do not find any reason in the

H impugned order or in the writ petition which may justify the relief granted

in the present case, we are of the view that the writ petition should have been dismissed. A

7. The learned Counsel for the respondent made a grievance before us that the cheque for Rs. 2000 mentioned in the first paragraph of the High Court's orders has been drawn in the name of Dr. Das whose fingers have become stiff and the money, therefore, could not be encashed. It was suggested that a cheque may be directed to be drawn in the name of the writ petitioner Ms. Kamlesh Jain. We do not see any reason for acceding to this prayer as it is not suggested that Dr. Das has no relation of her own, who can look after her needs. B

8. For the reasons indicated above the appeal is allowed, the impugned judgment of the High Court is set aside and the writ petition (C.W.J.C. No. 6581/1990) filed in the High Court is dismissed. There will be no order as to costs. C

N.P.V.

Appeal allowed.